

# Notice of Allowability

Application No.

10/697,608

Applicant(s)

BARROW ET AL.

Examiner

Umamaheswari Ramachandran

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/12/2007.
2. ☒ The allowed claim(s) is/are 1, 2, 7-15 renumbered as 1-11.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other _____   |

## **DETAILED ACTION**

### ***Status of Claims***

The examiner notes the receipt of the amendments and remarks received in the office on 9/12/2007. Claims 1, 2, 7-15 are pending.

### ***Application Priority***

This application claims benefit of 60/474,268 filed 5/29/2004.

## **REASONS FOR ALLOWANCE**

Applicants' arguments regarding the rejection of claims 1, 2, 7-15 under 35 U.S.C. 103(a) as being unpatentable over Muller et al (U.S. 6,248,338) in view of Whistler et al. (U.S. 5,453,281) and further in view of Mausner et al (U.S. 5,215,759) and further in view of Franklin et al. (U.S. 2001/0055574) have been found persuasive and the rejection is withdrawn. The closest prior art of record are Muller et al (U.S. 6,248,338), Whistler et al. (U.S. 5,453,281), Mausner et al (U.S. 5,215,759) and Franklin et al. (U.S. 2001/0055574). Claims 1, 2, 7-15 are allowable and are renumbered to 1-11.

The claims of the instant invention are directed to a cosmetic composition comprising from about 10-50% of glycerin, non-gelatinized modified starch and from about 1 to 30% of a crystalline gel structurant.

Muller et al. teach a skin care composition comprising glycerin and modified starch and a surfactant. The reference teach pre-gelatinized starches and the reference further states that "It has surprisingly been found that with a cooking starch (i.e., non-gelatinized starch) modified in the same way as a starch to be used according to the

Art Unit: 1617

invention, the desired advantages regarding rheology, skin feel and emulsion stability are not obtained even if the aqueous phase, following addition of the cooking starch, is heated for 15 minutes for a temperature above the gelatinizing temperature of the starch." (col. 4, lines 1-8). Also, several examples in the reference demonstrate the disadvantages (sandy) of using non-gelatinized modified starches (examples, 2, 5, 8, 17, 20, 23, 38, 41 and 44). In summary, the reference teaches away the use of non-gelatinized starches in the cosmetic composition. Therefore, there is no anticipation or motivation of making a cosmetic composition comprising a very high amount of glycerin, non-gelatinized modified starch and a gel structurant in the claimed amounts of the instant invention from the teaching or suggestion from prior art.

Whistler et al. teach a cosmetic composition with un-gelatinized, small starch granules to provide enhanced coverage and a softer feel when applied to the skin (see Abstract). The reference does not teach glycerin or the surfactants of the instant application. There is no anticipation or motivation of making a cosmetic composition comprising a very high amount of glycerin, non-gelatinized modified starch and a gel structurant in the claimed amounts of the instant invention from the teaching or suggestion from prior art.

Mausner et al. teaches a cosmetic composition comprising 1.2 % glycerin and the surfactant and the co-surfactant in the range of 69:40. The reference does not teach any non-gelatinized modified starch in the composition. The reference does not provide a motivation to add glycerol and the surfactants and co-surfactants in the claimed ranges of the instant application. Therefore, there is no anticipation or motivation of

Art Unit: 1617

making a cosmetic composition comprising a very high amount of glycerin, non-gelatinized modified starch and a gel structurant in the claimed amounts of the instant invention from the teaching or suggestion from prior art.

Franklin et al. is used to show that the amount and type of gelling agent and solvent can be varied to achieve a desired enthalpy of gelation, such as enthalpy that facilitates processing at conveniently accessible temperatures and that promotes stability. The reference does not teach a cosmetic composition comprising a very high amount of glycerin, non-gelatinized modified starch and a gel structurant. Therefore, there is no anticipation or motivation of making a cosmetic composition comprising a very high amount of glycerin, non-gelatinized modified starch and a gel structurant in the claimed amounts of the instant invention from the teaching or suggestion from prior art.

The claims directed to a cosmetic composition comprising from about 10 to about 50% of glycerin, a sensory effective amount of non-gelatinized modified starch selected from the group of C2-C5 hydroxyalkyl starch and a C2-C18 acyl starch and from about 1 to about 30% of crystalline gel structurant comprising a surfactant and a co-surfactant (in a range between 15:85 and 60:40) are free of prior art.

The claims are allowable over the closest art of record because they do not teach, disclose nor make obvious the claimed cosmetic composition comprising high amount of glycerin, non-gelatinized modified starch and crystalline gel structurant comprising a surfactant and a co-surfactant.

Art Unit: 1617

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umamaheswari Ramachandran whose telephone number is 571-272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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